



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201130009**
Release Date: 7/29/2011

Date: May 4, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.06-01; 501.04-07

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: March 3, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

O = State
Q = Date

UIL:

501.06-01
501.04-07

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code (Code) section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6) or under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issues

1. Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.
2. Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

Facts

You were incorporated on Q under the Nonprofit Mutual Benefit Corporation Law in the State of O. Your articles of incorporation state, in pertinent part, the following purpose:

The corporation is an association formed to manage a common interest development and repairs, maintains and manages common areas, enforces rules and regulations adopted from time to time by the Board of Directors and discharges such other lawful duties and responsibilities required pursuant to the

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

corporation's bylaws and the Declaration of Covenants and Restrictions (the "Declaration") with respect to the condominium project.

Your Declaration of Covenants, Conditions and Restrictions states that you are a condominium project. You explained that you are a homeowner's association with sixteen members who are all residents of one building; approximately one-fourth the size of a city block. You indicated that there will be no additional units constructed in your building, which would result in additional members.

You describe your activities as "providing management services for the homeowner's association." You further explained that your activities consist of maintaining the hallways, laundry room, courtyard and other common areas of the building. This includes cleaning and hiring a gardener and handyman. The common areas of your building are not open to the general public.

You are supported primarily by dues from your members. Upon dissolution your assets would first be used to pay your expenses. Any remainder would then be paid to members in accordance with the same percentage they had "paid in". The expenses you reported were for maintenance, repairs, garbage, telephone, water along with liability and property insurance.

Issue One: 501(c)(6)

Law

Section 501(c)(6) of the Code provides that organizations organized as business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(6)-1 A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 68-264; 1968-1 C.B. 264 A nonprofit organization is not exempt from federal income tax under section 501 (c) (6) of the Code if it operates a traffic bureau for members and nonmembers as its primary activity because activities that constitute the performance of particular services for individual persons may preclude exemption. An activity that serves as a convenience or economy to members in the operation of their businesses is a particular service of the type proscribed. The operation of a traffic bureau for members and nonmembers is a clear convenience and economy to them in their businesses, resulting in savings and simplified operations. Accordingly, this activity constitutes the performance of particular services for individual persons.

Indiana Retail Hardware Assn., Inc. v. United States (1966), 177 Ct. Cl. 288 In this case, the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under section 501(c)(6) of the Code.

Application of Law

Section 501(c)(6) provides exemption from income tax for organizations organized as business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues. As demonstrated in your Articles of Incorporation, you are not organized for any of the purposes described in section 501(c)(6) of the Code. Further, section 501(c)(6) provides that an organization is precluded from exemption if any part of the net earnings inure to the benefit of any private shareholder or individual. Because your assets will be distributed to your members upon your dissolution, your net earnings inure to individuals. Thus, you do not qualify for exemption under section 501(c)(6) of the Code.

Treasury Regulation 1.501(c)(6)-1 states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. You are not an association of persons with common business interest, rather, you are an association of persons living in one building who have as their common interest maintaining the areas open only to members. Unlike an organization described in 501(c)(6) the only common element among your members is a place of residency. Therefore you do not qualify for exemption under section 501(c)(6) of the Code.

Rev. Rul. 68-274 provides that activities that constitute the performance of particular services for individual persons may preclude exemption from federal income tax under section 501(c)(6) of the Code. Any activity that serves as a convenience or economy to members is a particular service. All of your activities are providing services to members. Maintaining the common areas of member residences is a convenience as this is an activity they would have to perform if not for your organization. Further, by pooling resources to provide maintenance for the common areas this activity is an economy to members. Because your primary activity is performing particular services for your members you do not meet the qualifications of 501(c)(6).

The organization in Indiana Retail Hardware Assn., Inc. v. United States failed to qualify for exemption from federal income tax under section 501(c)(6) of the Code because conducting services for its members was a substantial activity. As has been demonstrated, your primary activity is the performance of services to member. Because this is your sole activity, you are not exempt under section 501(c)(6) of the Code.

Determination – Issue One:

Because you are not an association of persons with a common business interest and because all of your activities constitute services to members, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

Issue Two: 501 (c)(4)

Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(4)-1 provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements and is not an action organization as set forth in paragraph (c)(3) of Regulation 1.501(c)(3)-1.

Rev. Rul. 74-17; 1974-1 C.B. 130 An organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. Condominium ownership involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners. Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

Rev. Rul. 74-99; 1974-1 C.B. 131 A homeowners association, to qualify for exemption under section 501 (c) (4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Flat Top Lake Ass'n v. United States, (1989 4th Circuit) 868 F.2d 108 The Court held that a homeowners association did not qualify for exemption under section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

Application of Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treasury Regulation 1.501(c)(4)-1 defines social welfare as primarily being engaged in promoting in some way the common good and general welfare of the people of the community. You do not promote the common good and general welfare of the people in the

community, but rather promote the interests of the sixteen persons occupying the single building that you maintain. Your activities are aimed at the maintenance of private areas not open to the public and serve an exclusive, rather than broad, class of people. An organization that is operated essentially for the private benefit of its members is not primarily engaged in activities for the common good and general welfare of the people of the community. Thus, you are operating for the private interests of your members and do not qualify for exemption under 501(c)(4).

The organization described in Rev. Rul. 74-17 failed to qualify for exemption from federal income tax because it was formed solely to provide for the management and maintenance of condominium housing project. Similarly, you are a condominium project formed to manage and maintain the commons areas of your facility. The common areas are only available to the persons residing in your facility. Accordingly, you are operating for the private interests of your members and do not qualify for exemption from federal income tax under section 501(c)(4) of the Code.

Rev. Rul. 74-99, above, describes the criteria that must be met in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code. The Court in Flat Top Lake Ass'n v. United States held that the criteria set forth in Rev. Rul. 74-99 must be met in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code. The criteria require that you must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental. You do not serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental such as a subdivision or township. Rather, the persons you serve are residents of a single building, one-quarter the size of a city block. Further, your common areas or facilities that the homeowner's associations owns and maintains must be for the use and enjoyment of the general public. The common areas of your facility are not open to the general public, but are rather open exclusively to your sixteen members. Because you fail the requirements set forth in Rev. Rul. 74-99 you do not qualify for exemption as a homeowners association under section 501(c)(4) of the Code.

Determination Issue Two:

Because you operate only for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code.

Summary:

Because you are not an association of persons with a common business interest and because all of your activities constitute services to members, you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code. Because you operate only for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Publication 892
Redacted Proposed Adverse Determination Letter